



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
[Redacted]
c/o [Redacted]
[Redacted]
[Redacted]

DECISION

MRA/155558

PRELIMINARY RECITALS

Pursuant to a petition filed February 14, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Waupaca County Department of Social Services in regard to Medical Assistance (MA), a hearing was held on March 27, 2014, at Waupaca, Wisconsin. The hearing record was held open for 7 days for a submission from the petitioner, which was received.

The issue for determination is whether all or a portion of the petitioner’s income should be “allocated” (disregarded) under spousal impoverishment provisions.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
By: [Redacted]
[Redacted]
[Redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Pamela Kolb, ES Spec.
Waupaca County Department of Social Services
811 Harding Street
Waupaca, WI 54981-2087

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Waupaca County.

2. The petitioner has lived in a nursing home since November 2012. He filed an application for Institutional /Long Term Care MA in November 2012. On *April 1, 2013*, the agency issued written notice to the petitioner advising that he would have to contribute \$1,216.21 toward his nursing home care expense (the balance is paid for by MA) for December 2012, and \$1,476.32 from January 1, 2013 forward. The patient liability contribution was re-computed beginning January 1, 2014 (due to changed income and maximum spousal allocation) and declared to be \$1,479.75 monthly from January 2014, forward. For 2014, a January 10, 2014 notice was issued that advised the petitioner that a \$2,462.10 spousal allocation would be subtracted from his income in this nursing home liability computation.
3. The petitioner has a spouse, C. [REDACTED], residing in the community. She has an average gross monthly income of \$468.10, all of it unearned income. The Maximum Community Spouse Income Allocation is \$2,898. Because the spouse's gross income was under the \$2,898 maximum allocation amount by \$2,462.10, the Department automatically determined that \$2,462.10 of the institutionalized spouse's income would be allocated to her.
4. The petitioner had gross monthly income of \$4,129 in 2014. After subtraction of the \$45 statutory personal allowance, the \$142.15 health insurance premium, and the \$2,462.10 Community Spouse Income Allocation, the Department determined that the petitioner had \$1,479.75 in 2014 available to contribute toward the cost of his nursing home care.
5. Ms. [REDACTED] has identified living expenses at hearing that total more than \$4,200 monthly.
6. Of the monthly expenses referred to in Finding #5, **\$4,144**, are reasonable, basic and necessary living expenses. The petitioner has atypical expenses for the spouse of a nursing home resident in that (1) they incurred a large amount of debt prior to the nursing home admission, and (2) she visits her husband at a facility that is distant from her residence.

DISCUSSION

Spousal impoverishment is an MA policy, created pursuant to the Medicare Catastrophic Coverage Act of 1988, which allows persons to retain assets and income that are above the regular MA financial limits. Spousal impoverishment policy applies only to institutionalized persons and their community spouses.

After an institutionalized person is found eligible, s/he may allocate some of his income to the community spouse if the community spouse's gross monthly income does not exceed the Maximum Community Spouse Income Allocation of \$2,898. See *MA Eligibility Handbook (MEH)*, 18.6.2, online at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>. In this case, the gross income of the community spouse is \$468.90. The Department therefore allocated \$2,462.10 from the institutionalized spouse's net income to her as the community spouse in 2014.

The community spouse argues that she cannot get by without a larger allocation. The county agency does not have discretion to allocate income to her that would cause her "income plus allocation" total to exceed \$2,898. However, I have some limited discretion and have determined that Ms. [REDACTED]'s income is short of what she needs to cover basic living expenses. The statute allows the allocation to be raised to avert financial duress, created by exceptional circumstances, for the community spouse. I conclude that the Maximum Allocation must be raised to **\$4,144**, to avert financial duress. Exceptional circumstances are present here: the spouse (1) incurred a large amount of debt prior to her spouse's institutionalization, and (2) has costs incurred in visiting her husband. See, Wis. Stat. §49.455(8)(c). The acceptable basic monthly expenses verified by the community spouse are as follows:

Rent	1110.00
Gas/electricity/water	192.00
Telephone/cable/internet	170.00
Federal income tax	0.00
State income tax	189.00
SocSec/Medicare taxes	0.00
Car/renter's insurance	164.00
Car payment	280.00
Gas (car)	120.00
Vehicle maintenance	88.00
Groceries/supplies	330.00
Lawn/snow care	50.00
Debt for which wife is liable	1000.00 (\$126,715 balance)
Wife's health insurance	142.00
Wife's med deductibles	23.00
Wife's OTC needs	127.00
Wife's dental/vision	20.00
Wife's prescription	39.00
Haircuts	40.00
Clothes/toiletries	<u>60.00</u>
 TOTAL	 \$4144.00

In setting the Maximum Allocation at \$4,144 I accepted as accurate the budget numbers provided by the community spouse in her exhibits. The county agency may leave this \$4,144 Maximum Allocation in place indefinitely (or the Maximum Allocation established in the *Handbook* at the time, if higher) unless the petitioner's spouse's circumstances change significantly. The higher amount is to allow the petitioner to pay off her existing medical expenses and home equity line deficiency debt, as there is no benefit to either the petitioner or the Department in having her deal with collection agencies. Also, the incurred bills (*e.g.*, medical costs for husband) were not frivolous.

Some of the expenses identified by the community spouse were not included in setting the Maximum Allocation. The excluded monthly expenses were Netflix, future veterinary costs, accidental death & dismemberment insurance, and the student loan for which the petitioner's child is jointly liable. Although I believe that the spouse does spend these amounts, I do not conclude that they are basic living expenses. Thus, they were not included. Finally, the petitioner listed a delinquent college student loan for his child, for which the parents have sole liability. I do not have to sort out what to do with that loan, because this couple has so many other large delinquent loans that came from medical providers in 2012 and the home equity line deficiency. These latter two types of debts total at least \$126,715.00. At a \$1,000 monthly pay-down in the expense list above, just these two types of debts will not be paid off in the petitioner's

lifetime. Also, I could have set the pay-down figure at a number higher than an even \$1,000, but that would be pointless because the petitioner only has gross income of \$4,129. The allocation to the community spouse can never be higher than the institutionalized person's gross income.

The petitioner asked that the revised patient liability amount be effective beginning with February 2013. This is not possible, due to the petitioner's tardiness in filing this hearing request. The time limit for contesting an agency MA action is 45 days. Wis. Stat. § 49.45(5). The petitioner was notified of the patient liability determination, going back to November 2012, *on April 1, 2013*. The appeal "clock" on an initial application does not start running until the first notice is issued, because the client has no way of knowing that an appeal will be needed until the first notice is issued. If he had filed a hearing request within 45 days of April 1 (May 18), I could have changed the liability amount going back to December 2012. *See*, Exhibit 1, April 1, 2013 notice, p.7, for appeal deadline date. However, in this case the client inexplicably waited until February 14, 2014 to appeal. Counting backwards from the February 14 filing, the 45-day appeal frame takes me back to the end of December 2013. I am therefore able to alter the patient liability amount beginning with the 1/1/2014 effective date, and will do so here.

On behalf of the petitioner, a copy of another Judge's decision in case #MRA/136387 was proffered as an example of a Judge altering the patient liability amount back to the date of application. That Judge went back to November 2011, based on a hearing request filed on October 31, 2011. Given the timing of the prompt hearing request in that case, I am unclear as to what point is being made here. The other case that was referenced, #MRA/147742, was created by a hearing request filed in March 2013. That hearing decision does not identify the issuance date of the notice that created the patient liability amount in the case, so it is not a useful precedent. The decision also does not identify a "start date" for the lowered patient liability amount.

CONCLUSIONS OF LAW

1. Due to exceptional circumstances, the petitioner's spouse requires \$4,144.00 to live on; her allocation must be adjusted accordingly, effective January 1, 2014.

THEREFORE, it is

ORDERED

That the petition for review herein be *remanded* to the county agency with instructions to increase the petitioner's Maximum Community Spouse Income Allocation to **\$4,144.00**, effective with the January, 2014, cost of care liability determination. This action shall be taken within 10 days of the date of this Decision. In all other respects, the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and

why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 29th day of April, 2014

\sNancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on April 29, 2014.

Waupaca County Department of Social Services
Division of Health Care Access and Accountability